

JAMES M. WRIGHT
BUTCH L. LOPER

IBLA 85-524

Decided February 24, 1987

Appeals from a decision of the Alaska State Office, Bureau of Land Management, holding for approval Native allotment application F-14669.

Appeals dismissed.

1. Administrative Procedure: Standing -- Appeals -- Rules of Practice:
Appeals: Standing to Appeal

One who is a mere trespasser upon land without claim or color of right does not possess the legally cognizable interest necessary for standing to appeal from a decision granting a conflicting Native allotment application.

APPEARANCES: James M. Wright, pro se; Butch L. Loper, pro se; Tred R. Eyerly, Esq., Anchorage, Alaska, for appellee, Nome Stickivan.

OPINION BY ADMINISTRATIVE JUDGE KELLY

James M. Wright and Butch L. Loper appeal from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 5, 1985, holding for approval Native allotment application F-14669 of Nome Stickivan, holding for rejection in part State selection application F-034722, and rejecting in part village selection application F-14844-A. Appellant Wright is the operator of the Golden North Air Service which uses as a runway a 5.5-acre parcel within the Native allotment lands; appellant Loper states that he has continuously used the Golden North airstrip since 1975 as a guide and fur dealer. Because of the similarity of the facts and issues in each appeal, we have consolidated these two appeals sua sponte.

Counsel for Stickivan has moved this Board to dismiss appellant Wright's appeal, contending, inter alia 1/, that Wright is a trespasser on the allot-

1/ Counsel also contends that Wright was tardy in filing his statement of reasons. This document was due on May 6, 1985, 43 CFR 4.412, and was received by the Board on May 10 within the authorized grace period, having been transmitted on May 6. 43 CFR 4.401(a). It does not appear, however,

ment lands and, accordingly, lacks standing to appeal. Although no similar motion is made as to appellant Loper, we shall examine the standing of both Wright and Loper; if Wright is found to be a trespasser lacking a legally cognizable interest in the lands sufficient to grant him standing, Loper can fare no better. In order to determine whether Wright is a trespasser on the allotment lands, it is necessary to examine the status of these lands. On August 9, 1965, the State of Alaska filed State selection applications F-034722 and F-034738 describing the allotment lands. ^{2/} Some years later in June 1970, appellant Wright extended an existing runway 1,063 feet into the allotment lands claimed by Stickivan and selected by the State. It is this runway extension that Wright seeks to have excluded from Stickivan's allotment and which is included in a June 15, 1971, Notice of Landing Area Proposal ^{3/} he filed with the Federal Aviation Administration. On December 1, 1971, Stickivan filed his Native allotment application. In its March 1985 decision, BLM determined that the lands applied for by the State were segregated by the occupancy of Stickivan at the time of the State selection.

Standing to appeal to this Board is governed by regulation 43 CFR 4.410: "Any party to a case who is adversely affected by a decision of an officer of the Bureau of Land Management or an administrative law judge shall have a right to appeal to the Board * * *." The Board has consistently interpreted this regulation to require that two distinct criteria be satisfied to prosecute an appeal before the Board: (1) that appellant be "a party to the case," and (2) that the appellant be "adversely affected" by the decision on appeal. Oregon Natural Resources Council, 78 IBLA 124, 125 (1983). In order to be

fn. 1 (continued)

that appellant served Stickivan and the Regional Solicitor with this pleading as required by 43 CFR 4.413. A more comprehensive statement of reasons was filed with the Board on July 8, 1985, and was apparently properly served. Counsel's motion to dismiss was prepared in response to this pleading. Where, as here, no prejudice has occurred as a result of failure to serve the initial statement of reasons, this Board will exercise its discretion to deny such a motion. 43 CFR 4.402.

^{2/} Application F-034722 was filed pursuant to section 6(a) of the Act of July 7, 1958, P.L. No. 85-508, 72 Stat. 339, 340, pertaining to community grants from public domain. This application described secs. 3-6, T. 18 S., R. 7 W., Fairbanks Meridian. Application F-034738 was filed pursuant to section 6(b) of the same Act and described all lands in T. 18 S., R. 7 W., Fairbanks Meridian, but excluding secs. 3-6. The land description noted that "[i]t is the State's intent by this blanket filing to cover all available lands within the above area excluding any prior rights, claims, or patented lands." Lands described by the Native allotment application of Nome Stickivan are located in parts of secs. 2, 3, 10, and 11 of this same township.

^{3/} This notice states that the Golden North Airfield would serve the community of Cantwell and the public as a refueling facility for day and night aircraft operation. The record does not reveal that any action has been taken on this notice.

adversely affected, the record must show that the appellant has a legally recognizable interest. In re Pacific Coast Molybdenum Co., 68 IBLA 325, 331 (1982).

[1] In Fred J. Schikora, 89 IBLA 251 (1985), the Board held that the interest of a trespasser who made improvements ^{4/} upon land without color or claim of right was insufficient to serve as the legally cognizable interest necessary for standing to appeal a decision granting a conflicting Native allotment application. Accord, Eugene M. Witt, 90 IBLA 330, 336 (1986).

At the time that appellant Wright built his runway extension into the lands at issue, the lands were segregated from all appropriations based upon application or settlement and location, including locations under the mining laws, by the State's filing of selection applications F-034722 and F-034738 on August 9, 1965. 43 CFR 2091.6-4; 43 CFR 2627.4; John C. and Martha W. Thomas (On Reconsideration), 59 IBLA 364, 367 (1981). The mere filing of a State selection application, regular on its face, will cause this segregation to occur. Thomas (On Reconsideration), *supra* at 367. No suggestion is made by appellants that such selections appear in any way irregular. The fact that State selection application F-034722 was rejected by the decision on appeal does not alter the fact that the allotment lands were segregated from all appropriations based upon application or settlement and location when construction of the runway extension began. Further, Stickivan's filing of his Native allotment application on December 1, 1971, also segregated the lands. 43 CFR 2561.1(e). Thus, Wright's building of the runway extension in 1970 and his subsequent use thereof were on lands closed to such use, and were in trespass. ^{5/}

Consistent with our holding in Schikora, *supra*, we hold that Wright does not have a legally cognizable interest in this controversy so as to confer upon him standing to appeal. The motion to dismiss the appeal of Wright is, accordingly, granted. ^{6/} Use by appellant Loper of the runway

^{4/} Construction of an airstrip has been recognized by the Board to be an improvement of land. Eugene M. Witt, 90 IBLA 330, 335 (1986). This improvement, appellant Wright observes, benefits not only his business, but also the public at large. Wright states a considerable amount of time, effort, and money went into the runway extension. Despite this fact and the obvious presence of a 2,100-foot runway, Wright notes that neither the field examiner nor the decision on appeal refers to the runway extension on the allotment lands.

^{5/} The segregative effect caused by the filing of the aforementioned State selections and Native allotment application makes unnecessary any extended discussion of the segregative effect caused by the occupancy of lands in good faith by Indians, Aleuts, and Eskimos. 43 CFR 2091.6-3. Regulation 43 CFR 2091.5 directs BLM to suspend all applications made by other than Indian occupants upon lands in the possession of Indians who have made improvements of any value whatever.

^{6/} We do not address appellant Wright's claims under section 14(c) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(c) (1982), because the Board is without jurisdiction to decide an appeal based on interests

built in trespass cannot convey to him any greater interest than that possessed by appellant Wright. Accordingly, we dismiss, sua sponte, the appeal of Loper. 7/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeals are dismissed.

John H. Kelly
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

R. W. Mullen
Administrative Judge

fn. 6 (continued)

claimed under section 14(c). Such appeals are premature when brought prior to conveyance because no dispute arises until the village corporation refuses to reconvey appropriate land and because, following conveyance, the Department has no jurisdiction over issues involving patented lands. Circle Civic Community Association, Inc., 67 IBLA 376, 378 (1982). The Board is also without authority to grant appellant Wright's request for "free and uninterrupted use of the airport * * * for a period of time not to exceed 55 years." Statement of reasons filed May 10, 1985.

7/ Appellant Wright's exhibit #4 is a collection of statements by users of the Golden North Airstrip recommending that the airstrip remain in public control. One of these statements, signed by Dale L. and Margie N. Nord, purports to be a notice of appeal from the instant decision. This statement is dated Apr. 1, 1985, and is addressed to the Regional Solicitor in Anchorage. It does not bear a date stamp showing that it was ever filed with the Alaska State Office, the proper recipient for such a notice. In contrast to the filing of a statement of reasons, see n.1 supra, the Board has no discretion to accept a notice of appeal that has been filed beyond the period provided by regulation 43 CFR 4.411(c). Accordingly, we hereby dismiss the appeal of the Nordes as untimely filed.

